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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re Y.C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

Y.C.,

Defendant and Appellant.

A145406

(Solano County
Super. Ct. No. J43007)

Y.C. appeals from a juvenile court order declaring him a ward of the court and placing him on probation after he admitted to a felony count of assault with a deadly weapon and a misdemeanor count of resisting a peace officer. He claims that a condition of his probation requiring that he not be in places or near people with deadly or dangerous weapons is unconstitutionally overbroad. We agree, but we decline to strike the condition, instead modify it, and otherwise affirm.

I.

FACTUAL AND PROCEDURAL
BACKGROUND

In April 2015, Y.C., who was then 15 years old, was riding in a car with two other juveniles when they pulled alongside another vehicle.¹ Y.C. brandished a knife at its

¹ The facts in this paragraph are drawn primarily from the dispositional report.

occupants, and someone in Y.C.'s car threw bottles toward them as well. After the Napa police gave chase, the car Y.C. was in crashed, and he attempted to escape but was detained. At the scene, he stated he was a member of the Sureño gang and had the moniker "Goofy."

Later that month, the Napa County District Attorney filed a petition under Welfare and Institutions Code section 602, subdivision (a) seeking to have Y.C. declared a ward of the court. The petition alleged one felony count of vandalism, one felony count of throwing a substance at a vehicle, and one misdemeanor count of resisting a peace officer.² Y.C. ultimately admitted to the misdemeanor allegation and a new allegation that he committed a felony count of assault with a deadly weapon.³ The case was then transferred to Solano County for disposition.

At the dispositional hearing, the juvenile court declared Y.C. a ward of the court and placed him on probation with various conditions, including several under the heading "Gang related terms and conditions." One of the gang-related conditions provides that Y.C. "shall not be present in any building or vehicle that he knows contains a firearm, ammunition, or other deadly or dangerous weapon, nor shall [he] be in the presence of any person or persons whom [he] knows possesses a firearm, ammunition, or deadly or dangerous weapon."⁴ The other gang-related conditions include terms prohibiting Y.C. from being a member of a criminal street gang, associating with people he knows to be gang members, participating in gang-related activity, and being in locations known by him for gang-related activity. He is also subject to a condition that prohibits him from possessing any ammunition or deadly or dangerous weapons and from owning or possessing a firearm until he turns 30 years old.

² The allegations were made under Penal Code section 594, subdivision (b)(2) (vandalism), Vehicle Code section 23110 (throwing substance at vehicle), and Penal Code section 148 (resisting a peace officer).

³ The assault allegation was made under Penal Code section 245, subdivision (a)(1).

⁴ The quoted language appears in the juvenile court's oral pronouncement. The probation condition is worded slightly differently in the dispositional order, and we conclude the oral pronouncement controls. (See *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1346.)

Y.C. objected to the imposition of the gang-related conditions. He admitted that he had previously associated with Sureño gang members, but he denied ever joining the gang or having a gang moniker. The juvenile court indicated that his admission to the contrary at the time of his offenses was sufficient evidence to support the imposition of gang-related conditions.

II. DISCUSSION

Y.C. contends that the challenged probation condition is unconstitutionally overbroad because it prohibits a wide range of otherwise lawful conduct that does not “have anything to do with gangs” or enabling his rehabilitation. We agree, and we therefore modify the condition to be more narrowly tailored to its purpose.

When a minor is made a ward of the juvenile court and placed on probation, the court “may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b); see also *id.*, § 202, subd. (b).) “ ‘In fashioning the conditions of probation, the . . . court should consider the minor’s entire social history in addition to the circumstances of the crime.’ ” (*In re R.V.* (2009) 171 Cal.App.4th 239, 246.) The court has “broad discretion to fashion conditions of probation” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5), although “every juvenile probation condition must be made to fit the circumstances and the minor.” (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203.)

When a probation condition imposes limitations on a person’s constitutional rights, it “ ‘must closely tailor those limitations to the purpose of the condition’ ”—the probationer’s reformation and rehabilitation—“ ‘to avoid being invalidated as unconstitutionally overbroad.’ ” (*People v. Olguin* (2008) 45 Cal.4th 375, 384; *In re Victor L.* (2010) 182 Cal.App.4th 902, 910 (*Victor L.*).) “The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the [probationer]’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical

necessity will justify some infringement.” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) A condition imposed on a minor must be narrowly tailored to both the condition’s purposes and the minor’s needs, but “ ‘ ‘ ‘a condition . . . that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.’ ” ” (Victor L., at p. 910, quoting *In re Sheena K.* (2007) 40 Cal.4th 875, 889.) Whether a probation condition is unconstitutionally overbroad is a question of law reviewed de novo.⁵ (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.)

Initially, the parties disagree about what the challenged condition’s phrase “deadly or dangerous weapon” means. When interpreting a probation condition, we rely on “context and common sense” (*In re Ramon M.* (2009) 178 Cal.App.4th 665, 677) and give the condition “ ‘the meaning that would appear to a reasonable, objective reader.’ ” (*People v. Olguin, supra*, 45 Cal.4th at p. 382.)

Y.C. argues that “deadly or dangerous weapon” covers a number of implements, including kitchen knives, sports equipment, and tire irons, such that the condition “places [him] at risk of violating probation if he is in,” for example, “a restaurant, a school cafeteria, a butcher shop, . . . his own family’s kitchen[,] . . . a golf course, . . . an auto mechanic’s shop, or . . . any car that has equipment for changing a tire.” The Attorney General responds that the phrase “ ‘dangerous or deadly weapon’ has a clearly established meaning,” set forth in *In re R.P.* (2009) 176 Cal.App.4th 562, and covers both weapons that are deadly as a matter of law and weapons that may be used to inflict deadly harm, but only when a person intends to put them to such use.

In re R.P., supra, 176 Cal.App.4th 562 held that a probation condition prohibiting a minor from possessing any “ ‘dangerous or deadly weapon’ ” was sufficiently clear to withstand a vagueness challenge by construing the condition to prohibit possession of two categories of items: “inherently deadly items such as dirks and blackjacks which are specifically designed as weapons and are thus ‘deadly weapons’ as a matter of law” and

⁵ The Attorney General concedes that Y.C.’s claim is preserved despite his failure to raise a constitutional objection below. (See *In re Sheena K., supra*, 40 Cal.4th at p. 889.)

“other items that are not deadly per se” but which can be used to inflict deadly harm and which the minor intended to use “to inflict, or threaten to inflict,” deadly harm. (*Id.* at pp. 565, 567-568, italics omitted; accord *In re Mark C.* (2016) 244 Cal.App.4th 520, 538-539.) We agree with *R.P.*’s construction of the phrase “dangerous or deadly weapon.” Under this construction, none of the scenarios Y.C. posits would result in a violation of probation: he is permitted to be in places containing implements that are not deadly weapons as a matter of law but that could be used to inflict deadly harm, such as knives, so long as he is unaware of any intent to use them for that purpose.

We now turn to consider whether the challenged condition as we have construed it is overbroad. In doing so, we agree with the parties’ assumption that it is subject to heightened scrutiny because it imposes limitations on Y.C.’s constitutional rights. Although Y.C. does not clearly specify which of those rights underlie his claim, it is apparent that the condition implicates a number of them, including his rights to freedom of association (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084) and access to courts and other public places. (*People v. Perez* (2009) 176 Cal.App.4th 380, 385.) The Attorney General offers no argument to the contrary.

Y.C. argues that the challenged condition is not narrowly tailored because it prevents him from being in places and near people unrelated to its purpose, which he claims is “to prohibit [him] from engaging in gang-related activities.” The Attorney General, in contrast, argues that “both context and common sense would suggest that the . . . condition is intended to broadly restrict [Y.C.] from gaining access to deadly weapons during his probationary period.” Although the juvenile court did not directly address its purpose in imposing the condition, the circumstances better support Y.C.’s position. It seems doubtful the court would have imposed the condition if there had not been evidence that Y.C. was affiliated with a gang since the condition is part of a form list of “gang related” conditions and the court referred to Y.C.’s claim of being in a gang before imposing those conditions. “Gang activities and weapon possession go hand-in-hand” (*In re Frankie J.* (1988) 198 Cal.App.3d 1149, 1154, fn. 4), and preventing Y.C. from being in places and near people with deadly or dangerous weapons would thus tend to

prevent him from involvement in gang-related activity. If the challenged condition's purpose were to prevent Y.C. from generally having access to deadly or dangerous weapons, presumably to avoid having Y.C. himself use them, that purpose would seem to be sufficiently served by the separate probation condition that prohibits him from possessing such weapons.

The challenged condition is not narrowly tailored to the purpose of restricting gang-related activities because it prohibits a wide range of lawful activity that has nothing to do with ensuring Y.C. avoids involvement with a gang. As he points out, the condition by its terms prevents him from being in the presence of *anyone* he knows is armed, "including police officers and security guards," and his exclusion from buildings containing deadly or dangerous weapons prevents him from visiting any "buildings that may be guarded or patrolled by police officers or security personnel," including "banks, airport terminals, sports stadiums, and even schools." In *People v. Forrest* (2015) 237 Cal.App.4th 1074 (*Forrest*), the Court of Appeal held that a similar condition prohibiting the defendant from " 'remain[ing] in any building, vehicle or in the presence of any person where [she] know[s] a firearm, deadly weapon, or ammunition exists' " was unconstitutionally overbroad. (*Id.* at pp. 1083-1084.) Recognizing "the widespread presence of armed security personnel in buildings and other locales," the court determined that the condition impinged on the defendant's "constitutionally guaranteed freedom of travel and association and her right to access the courts" and "[was] not narrowly tailored to safeguard these fundamental rights while restricting her conduct in a manner reasonably designed to promote her rehabilitation and to protect public safety." (*Id.* at p. 1084.)

The Attorney General responds that "no reasonable court or person would interpret [the challenged] condition to bar [Y.C.] from going to the bank and airport or require him to flee from armed security personnel," but the fact that the challenged condition would lead to absurd results if interpreted literally is precisely why it cannot stand in its current form. The hope that a future court would be reasonable enough not to find a violation of probation for technically prohibited quotidian activities that have

nothing to do with gang involvement—and that, like cooperating with police officers, may indeed be required under the law—“is cold comfort to a probationer who suffers from an unfounded arrest and detention based on the whim or vengeance of an arbitrary or mean-spirited probation officer.” (*Victor L.*, *supra*, 182 Cal.App.4th at p. 913.)⁶

Y.C. claims that the appropriate remedy is to strike the challenged condition because “its purpose is adequately addressed by the other weapons condition” which, as we have stated above, prohibits him from possessing ammunition or deadly or dangerous weapons and from owning or possessing firearms until he turns 30 years old. We disagree. As we have explained, the challenged condition’s purpose is to prevent Y.C.’s involvement with gangs, not merely his possession of weapons. The challenged condition goes beyond the weapons-possession condition in accomplishing the former purpose because it prevents Y.C. from being around weapons that are apt to be used for gang-related purposes, even if he is not the person who may use them.

Alternatively, relying on *Forrest*, *supra*, 237 Cal.App.4th 1074, the parties propose that the challenged condition be modified. The *Forrest* probation condition was modified to read, “ ‘Do not remain in the presence of any person whom you know illegally possesses a firearm, deadly weapon, or ammunition. Also, do not remain in a building, in a vehicle, or in the presence of any person when you knowingly have ready access to a firearm, regardless of whether it is lawfully possessed or was lawfully acquired.’ ” (*Id.* at p. 1085.) Thus, the Court of Appeal made two primary modifications to the condition. First, it limited the class of people whom the defendant could not be near to those who possessed weapons *illegally* or those who possessed a firearm, whether legally or illegally, if the defendant *knowingly had ready access to* the firearm. Second,

⁶ The Attorney General also argues that the challenged condition is not overbroad because a similar probation condition was upheld in *Victor L.* after being modified to include a knowledge requirement, which the challenged condition already has. (See *Victor L.*, *supra*, 182 Cal.App.4th at pp. 912-913.) But *Victor L.* specifically stated it was ruling on only the appellant’s vagueness challenge, not the “challenges based on overbreadth or the right to travel” (*id.* at p. 913, fn. 6), and “it is axiomatic that cases are not authority for propositions not considered.” (*People v. Alvarez* (2002) 27 Cal.4th 1161, 1176.)

it limited the class of places where the defendant could not be to those where the defendant *knowingly had ready access to* firearms.⁷

We agree with Y.C. that, in keeping with *Forrest, supra*, 237 Cal.App.4th 1074, it is appropriate to modify the challenged condition to provide that he cannot be in the presence of people who he knows illegally possess weapons. The *Forrest* condition was not gang-related, however, and we believe an additional modification is appropriate to provide that Y.C. cannot be in the presence of gang members who possess deadly or dangerous weapons, even if that possession is lawful. We decline, however, to adopt the Attorney General's suggestion that we also follow *Forrest* by modifying the challenged condition to prohibit Y.C. from being near people or in places with weapons if he has "ready access" to those weapons. Other conditions of his probation prevent Y.C. from possessing weapons and from being in locations known to him for gang-related activity, and we are unable to discern how barring Y.C. from being in places where he has ready access to weapons would further accomplish the challenged condition's purpose. Therefore, we modify the challenged condition to provide that he "not be in the presence of any person or persons who [he] knows illegally possess a firearm, ammunition, or other deadly or dangerous weapons or who [he] knows are gang members and possess a firearm, ammunition, or other deadly or dangerous weapons."

III. DISPOSITION

Probation condition 21c in the juvenile court's May 19, 2015 order, which currently reads, "The Minor shall not be present in any building, vehicle or be in the presence of any person or persons to whom the Minor knows possesses a firearm,

⁷ *Forrest, supra*, 237 Cal.App.4th 1074 changed the second sentence of the probation condition to refer only to firearms instead of the broader category of deadly or dangerous weapons because it accepted the argument that the defendant would otherwise " 'have ready access to "deadly weapons" and "ammunition" any time she enters either a sporting goods store or a general store such as Walmart as these items are generally placed on store shelves and may be seen as readily accessible.' " (*Id.* at p. 1085.) We need not address this aspect of *Forrest* because, as we discuss below, it is unnecessary to insert the phrase "ready access" into the challenged condition.

ammunition, or other dangerous or deadly weapons or where such objects exist” is modified to read: “The Minor shall not be in the presence of any person or persons who the Minor knows illegally possess a firearm, ammunition, or other deadly or dangerous weapons or who the Minor knows are gang members and possess a firearm, ammunition, or other deadly or dangerous weapons.” As so modified, the order is affirmed.

Humes, P.J.

We concur:

Margulies, J.

Dondero, J.